

REMARKS

Applicant has carefully studied the Office Action of November 26, 2002 and offers the following remarks to accompany the above amendments. Initially, Applicant corrects a typographical error on page 12 of the specification. No new matter has been added.

Applicant further adds new independent claim 47, which recites that the reporting of an amount of fuel alleged to be dispensed is derived from the flow meter and pulser, and that the reference is derived independently of the flow meter and pulser. Applicant previously argued this point, but the additional language clarifies the claims with respect to this position. As Applicant has previously argued this position, no new search is required by the Patent Office to examine claim 47.

The Patent Office maintains its rejection of claims 1-46 as being anticipated under 35 U.S.C. § 102(e) over Myers et al. Applicant herein submits a declaration under 37 C.F.R. § 1.131 from the inventor showing conception prior to the filing date of the Myers et al. reference. This declaration is supported by the declaration of Steven N. Terranova showing diligence from conception to filing. This effectively removes Myers et al. from the pool of available prior art. Since the Myers et al. reference is the only reference being cited, its removal effectively clears the way for the claims to be allowed.

Applicant further reiterates its position from the Office Action of September 9, 2002 that Myers et al. does not anticipate the present invention. Applicant incorporates by reference its previous arguments as if set forth fully herein. Applicant reserves the right to address this position in an appeal or subsequent response if, for some unforeseen reason, the declarations submitted herewith are insufficient to remove Myers et al. from the pool of available prior art.

Applicant requests claim allowance at the Examiner's earliest convenience.

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS DOCUMENT IS
BEING DEPOSITED WITH THE UNITED STATES
POSTAL SERVICE AS FIRST-CLASS MAIL, IN
AN ENVELOPE ADDRESSED TO:
COMMISSIONER FOR PATENTS,
WASHINGTON, D.C. 20231, ON January 10, 2003.

Kelly Farrow

Name of Depositor

Ull

Signature

1/10/03

Date of Signature

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:



Taylor M. Davenport
Registration No. 42,466
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: January 10, 2003

Attorney Docket: 2400-384

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the specification:

Please replace the paragraph beginning on page 12, line 11, with the following rewritten paragraph:

-- In a first aspect of this second embodiment, the fuel dispenser 10, and particularly the meter 56, reports to the control system 50 a measured flow rate of the fuel presently being dispensed (block 120). Control system 50 compares the reported flow rate to a historical flow rate established by the fuel dispenser 10 (block 122) or a flow rate calculated from the amount [fo] of fuel reported as dispensed on display 12. If the flow rate fails to meet some criterion or criteria (block 124) then an alarm may be generated (block 126). Note that for a given fuel dispenser 10, the average flow rate should remain relatively constant from transaction to transaction, thus the historical data would have to be established before any tampering to be effective. This could be done during factory calibration or immediately after installation to reduce the risk of the historical data being fraudulent from the outset. However, if the historical data is accurate, any change or deviation therefrom may be indicative of tampering.--.